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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/678,206

10/03/2003

Keith Colacioppo

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27752 7590 12/10/2008  
THE PROCTER & GAMBLE COMPANY  
Global Legal Department - IP  
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EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

12/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/678,206	<b>Applicant(s)</b> COLACIOPPO ET AL.	
	<b>Examiner</b> Robyn Doan	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's Amendment filed 8/27/2008 has been entered and carefully considered. New claims 28 and 29 have been added. Arguments regarding the 35 U.S.C 102(b) have not been found to be persuasive, therefore, claims 17-29 are rejected under the same rejections as set forth in the office action mailed 6/4/08 and a new ground rejection as set forth below.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-19 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/69308.

With regard to claims 17 and 27, WO '308 discloses a hair treatment applicator (figs. 3 and 4) comprising a handle (the container to which the cap 1 screw into), a head (1) connected to the handle, the head comprising a first retaining structure (at 5, fig. 4) including a first base (14, fig. 8), a first plurality of tines (5) extending from the base, a first baffle (10, fig. 4) extending from the base which together form a first retaining volume, a second retaining structure (at 5) including a second base (14, fig. 8), a second plurality of tines (5) extending from the second base, a second baffle (10, fig. 4) extending from the second base which together form a second retaining volume; a

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passage (figs. 3, 4) between first and second baffles, wherein the passage is free of hair treatment prior to first use; a hair treatment (translated abstract) contained in the first and second retaining structures. In regard to claims 18, 19, first and second tines extend substantially perpendicularly to the first and second base (figs. 3, 4).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-26, 28, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '308.

With regard to claims 20-26, WO '308 discloses the essential claimed invention except for the handle being integrally molded with the retaining structures, the applicator being molded as single piece and being made of polyethylene; WO' 308 also fails to show the shape of the tines being frusto-conical each tine with a proximal end diameter being .125 to .3125 inches and a distal end diameter of .0625 to .375 inches, a height of each tine being .25 inches to 1 inches and the passage width being at least .25 inches. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to form the handle and the applicator as a single piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. It would have been obvious

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to one having an ordinary skill in the art at the time the invention was made to employ the applicator being made of polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct each tine with a proximal end diameter being .125 to .3125 inches and a distal end diameter of .0625 to .375 inches, a height of each tine being .25 inches to 1 inches and the passage width being at least .25 inches, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). In regard to claims 28, 29, WO '308 fails to show the arrangement of the tines in the first and second rows as claimed in claims 28 and 29; however, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the tines in the particular arrangement as claimed in claims 28 and 29, since such modifications would involve a mere change in the arrangement design of the known component.

### ***Response to Arguments***

Applicant has argued that WO '308 fails to show the passage is substantially free of hair treatment. However, Applicant is noted that the passage (4) of WO '308 is substantially free of hair treatment prior to its first use. Also, with respect to claim 27, the

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reference teaches the applicator and the applicator can be connected with a container which contains a hair treatment, therefore, it teaches the combination of the hair treatment and the applicator; also, in the case, before use, the passage is still free of hair treatment.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3732